

Thanet District Council

Appropriate Policy Document

December 2022

A decorative graphic at the bottom of the page consisting of several overlapping, curved bands in various shades of blue, creating a sense of movement and depth.

Thanet District Council

Appropriate Policy Document

Introduction

Thanet District Council (“the Council”) has a statutory duty to meet its obligations as set out within the UK General Data Protection Regulation (“GDPR”)¹ and the Data Protection Act 2018 (“DPA”).

This Appropriate Policy Document (“APD”) sets out how the Council will protect special category and criminal offence data which we process and it details the safeguards we have put in place when we process special category data and criminal conviction data.

This document satisfies the requirement of the [Data Protection Act 2018 \(DPA 18\) Part 4](#) for a Data Controller (the Council) to have in place an ‘appropriate policy document’. This should be read in conjunction with the Council’s Data Protection Policy.

This document covers all processing carried out by the Council which is subject to GDPR Articles 9 - processing of special categories of personal data and 10 - processing of personal data relating to criminal convictions and offences and in reliance of the conditions set out in the Data Protection Act 2018, Schedule 1 - conditions for processing special categories of personal data and criminal convictions data.

This document covers all sensitive processing of personal data that falls within the scope of Law Enforcement which is subject to Part 3 of the Data Protection Act 2018 and is separate from the UK GDPR regime.

Legal basis for processing personal data

To process personal data we must first identify a basis for the processing (found in Article 6 of the GDPR). The following are likely bases we could use:

- Article 6(1)(a) the data subject has given consent to the processing
- Article 6(1)(b) the performance of a contract
- Article 6(1)(c) compliance with a legal obligation to which the Council is subject
- Article 6(1)(d) protect the vital interests of the data subject
- Article 6(1)(e) the performance of a task carried out in the public interest or in the exercise of official authority vested in the Council

¹ References to GDPR in this policy mean the Regulation (EU) 2016/679 (General Data Protection Regulation) by virtue of the European Union (Withdrawal) Act 2018. General Data Protection Regulations 2016 (GDPR) as supplemented and varied by the Data Protection Act 2018.

Conditions for processing special category data

In addition to the above, when the Council carries out the processing of special categories of personal data, a condition under UK GDPR Article 9 must also be satisfied.

The Council will do so with reference to one or more of the following:

- Article 9(2)(a) explicit consent for one or more specified purposes
- **Article 9(2)(b) employment and social security and social protection**
- Article 9(2)(c) protect the vital interests of the data subject
- Article 9(2)(f) legal claims or judicial acts
- Article 9(2)(g) reasons of substantial public interest
- **Article 9(2)(h) health or social care (with a basis in law)**
- **Article 9(2)(i) public health (with a basis in law)**
- **Article 9(2)(j) archiving, research or statistics**

If processing is reliant on conditions (b), (h), (i) or (j), an associated condition in UK law, set out in Part 1 of Schedule 1 of the DPA 2018 must also be met.

If processing is reliant on Article 9(2)(g) - Reasons of substantial public interest, an associated condition in UK law, set out in Part 2 of Schedule 1 of the DPA 2018 must be met.

The specific conditions under which data may be processed are set out at paragraphs 1-28 of Schedule 1 to the Data Protection Act 2018.

Advice MUST be sought from the Information Governance team whenever special category data is to be processed to ensure compliance with this document and appropriate selection of a special condition.

We process special categories of personal data under the following GDPR Articles:

Article 9	Example
<p>Article 9(2)(a) - explicit consent.</p> <p>The Council makes sure consent given is unambiguous and for one or more specified purposes, is given by an affirmative action and is recorded as the condition for processing.</p>	<p>Health information the council receives from service users or customers who require a reasonable adjustment to access its services.</p>
<p>Article 9(2)(b) - processing is necessary for the purposes of performing or exercising obligations or rights which are imposed or conferred by law on the council or the data subject in connection with employment, social security or social protection.</p>	<p>Staff sickness absences and political activity declarations. The Council calculates benefits entitlements which is likely to necessitate collecting data in any of the special categories listed</p>

Article 9	Example
	above in respect of the client and their family.
<p>Article 9(2)(c) - processing is necessary to protect the vital interests of the data subject or of another natural person.</p> <p>This would be very unusual and only used in limited emergency circumstances.</p>	Using health information about a member of staff or tenant in a medical emergency
<p>Article 9(2)(e) - processing relates to personal data which are manifestly made public by the data subject.</p>	Council records the publicly declared political affiliations of elected councillors and of candidates for election.
<p>Article 9(2)(f) - for the establishment, exercise or defence of legal claims</p>	employment tribunal and litigation
<p>Article 9(2)(g) - reasons of substantial public interest. The Council is required to act to protect the public and the public purse.</p> <p>The Council has a wide variety of duties which it must fulfil and powers we can exercise in the public interest. Our processing of personal data is generally for the purposes of substantial public interest, necessary for the carrying out of those duties or the exercise of those powers.</p>	Information we seek or receive as part of investigating a complaint, information required as a local benefits and taxation authority. Data may be needed in relation to the application and enforcement of planning, licensing and environmental protection law.
<p>Article 9(2)(h) - processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services</p> <p>The relevant purpose the Council relies on is Schedule 1 Part 1 paragraph 2 - Health or social care purposes.</p>	Referring staff to occupational health, safeguarding referrals,
<p>Article 9(2)(i) - processing is necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health</p> <p>The relevant purpose the council relies on is Schedule 1 Part 1 paragraph 3 - Public health.</p>	the provision of public health monitoring and statistics and responding to new threats to public health.

Schedule 1, Part 1 conditions: conditions relating to employment, social security and social protection

The following meets the requirement at paragraph 1(a) of Schedule 1, Part 1 to the Data Protection Act 2018 where the processing of special category personal data is necessary for the purposes of performing or exercising obligations or rights which are imposed or conferred by law on the controller or the data subject in connection with employment, social security or social protection.

- Processing personal data concerning health in connection with our rights under employment law.
- Processing data relating to criminal convictions in connection under Article 10 of the GDPR in connection with our rights under employment law in relation to recruitment, discipline and dismissal

Schedule 1, Part 2 conditions: processing in the substantial public interest

The following meets the requirement at paragraph 5 of Schedule 1, Part 2 to the Data Protection Act 2018 where the processing of special category personal data is necessary for reasons of substantial public interest. The specific conditions under which data may be processed for reasons of substantial public interest are set out at paragraphs 6 to 28 of Schedule 1, Part 2 to the Data Protection Act 2018.

Conditions	Why is the processing necessary?
Para 6 - Statutory and government purposes	The exercise of a function conferred on a person by enactment or the exercise of a function of the Crown, a Minister or a government department.
Para 7 - Administration of Justice and parliamentary purposes	The administration of justice or the exercise of a function of Parliament
Para 8 - Equality of opportunity or treatment	Identifying or keeping under review the existence or absence of equality of opportunity or treatment between groups of people with the view to enabling such equality to be promoted or maintained. It only applies to particular types of special category data, e.g. data concerning sexual orientation can only be processed for reviewing equality of opportunity or treatment of people of different sexual orientation.
Para 9 - Racial and ethnic diversity at senior levels of organisations <i>Compliance with a legal obligation (GDPR, Article 6(1)(c)).</i>	Performing or exercising obligations or rights which are imposed or conferred by law on the controller or the Data Subject in connection with employment, social security or social protection.
Para 10 - Preventing or detecting unlawful acts	Law enforcement functions may require data about residents and employees' criminal record, ethnicity,

Conditions	Why is the processing necessary?
	health data when processed for the purposes of the local authorities' obligations under the various criminal legislation
Para 11 - Protecting the public against dishonesty etc	Law enforcement functions may require data about residents and employees' criminal record, ethnicity, health data when processed for the purposes of the local authorities' obligations under the various criminal legislation
Para 12 - Regulatory requirements relating to unlawful acts and dishonesty	Law enforcement functions may require data about residents and employees' criminal record, ethnicity, health data when processed for the purposes of the local authorities' obligations under the various criminal legislation
Para 13 - Journalism etc in connection with unlawful acts and dishonesty	For the purposes of journalism by the Council such as through press releases
Para 14 - Preventing fraud	Processing for the purposes of preventing fraud.
Para 15 - Suspicion of terrorist financing and money laundering	For certain disclosures made under the Terrorism Act 2000 and Proceeds of Crime Act 2002.
Para 18 - Safeguarding of children and of individuals at risk	Safeguarding children and vulnerable adults and preventing modern day slavery.
Para 19 - Safeguarding of economic well-being of certain individuals	Supporting certain individuals, in terms of debt collection, housing, home energy
Para 20 - Insurance	For an insurance purpose such as public liability, claims,
Para 21 - Occupational pensions	Making a determination in connection with eligibility for benefits payable under an occupational pension scheme.
Para 22 - Political parties	Processing of political opinions data for the political activities of a person or organisation registered under the Political Parties, Elections and Referendums Act 2000, most likely applicable for Councillors.
Para 23 - Elected representatives responding to requests	Allows an elected representative to process data where necessary (in connection with the discharge of the elected representative's functions) for the

Conditions	Why is the processing necessary?
	purpose of taking action in response to a request from an individual (ward casework).
Para 24 - Disclosure to elected representative	Processing which consists of the disclosure of personal data to an elected representative by a data controller necessary for the purpose of responding to a communication from the representative (in relation to a request the representative has received from an individual).

Conditions for processing criminal offence data

To process criminal offence data the Council must be able to demonstrate:

- a lawful basis under Article 6; and
- either official authority or a Schedule 1 condition for processing criminal offence data under Article 10.

The main lawful basis for processing criminal convictions data is Article 6(e) - processing necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.

Where the Council is processing criminal offence data for purposes other than for Law Enforcement and where it is not processing under the control of official authority, a Schedule 1, Part 3 condition is identified within this Appropriate Policy Document.

Where the Council is processing criminal offence data for Law Enforcement purposes and under the control of official authority, the Council will not be required to identify a Schedule 1 condition for processing. This processing is covered by Part 3 of the Data Protection Act 2018 and is separate from the UK GDPR regime.

Schedule 1, Part 3 conditions: processing criminal convictions data

Conditions	Why is the processing necessary?
Para 29 - Consent	With the consent of the data subject.
Para 30 - Protecting individual's vital interests	Processing of criminal convictions data necessary in the vital interests of an individual and where the person is physically or legally incapable of giving consent

Conditions	Why is the processing necessary?
Para 32 - Personal data in the public domain	Processing where personal data is manifestly made public by a data subject.
Para 33 - Legal claims	Processing is necessary for the purpose of: (i) any legal proceedings; (ii) obtaining legal advice; or (iii) establishing, exercising or defending legal rights.
Para 36 - Extension of certain conditions under Schedule 1, Part 2	Allows processing of criminal convictions data, where processing would meet a condition in Schedule 1, Part 2 except for the fact it must satisfy the substantial public interest test, provided the controller has an appropriate policy document in place and meets the additional safeguards in Part 4.
Para 37 - Extension of insurance conditions.	Should the processing of personal data not reveal racial or ethnic origin, religious or philosophical beliefs or trade union membership, genetic data or data concerning health, then this extension allows processing where it would otherwise meet the insurance condition in Schedule 1, Part 2, or the condition relating to the extension of certain conditions under Schedule 1, Part 2 stated above when processing criminal convictions

Procedures for ensuring compliance with the principles

Article 5 of the GDPR sets out the data protection principles. These are our procedures for ensuring that we comply with them.

Principle (a): lawfulness, fairness and transparency

Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject.

The Council will:

- ensure that personal data is only processed where a lawful basis applies (from GDPR, Article 6), and where processing is otherwise lawful
- only process personal data fairly and ensure that data subjects are not misled about the purposes of any processing
- ensure that data subjects receive full privacy information so that any processing of personal data is transparent
- carry out Data Protection Impact Assessments, where appropriate, to evaluate whether proposed data processing is fair and lawful

Principle (b): purpose limitation

Personal data shall be collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes.

The Council will:

- only collect personal data for specified, explicit and legitimate purposes and we will inform data subjects what those purposes are in a privacy notice
- not use personal data for purposes that are incompatible with the purposes for which it was collected. If we do use personal data for a new purpose that is compatible, we will inform the data subject first.

Principle (c): data minimisation

Personal data shall be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed.

The Council will:

- only collect the minimum personal data that we need for the purpose for which it is collected
- ensure the data we collect is adequate and relevant.
- Use Data Protection Impact Assessments to assess if the proposed processing is excessive

Principle (d): accuracy

Personal data shall be accurate and, where necessary, kept up to date.

The Council will:

- ensure that personal data is accurate and kept up to date where necessary

- take particular care to do this where our use of the personal data has a significant impact on individuals
- provide online services on our website in which residents can update their records
- correct reported inaccuracies when notified

Principle (e): storage limitation

Personal data shall be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed.

The Council will:

- only keep personal data in identifiable form as long as is necessary for the purposes for which it is collected, or where we have a legal obligation to do so.
- delete or render it permanently anonymised any personal data that is no longer needed.
- ensure that data is held and disposed of in line with our retention schedule

Principle (f): integrity and confidentiality (security)

Personal data shall be processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures.

The Council will:

- ensure that there are appropriate organisational and technical measures in place to protect personal data.
- work with our Digital and IT staff for expert guidance in IT security
- have policies that require ways of working that uphold data integrity and confidentiality

Accountability principle

Under GDPR, Article 5(2), the Council shall be responsible for, and be able to demonstrate compliance with these principles. We will:

- ensure records are kept of all personal data processing activities and these are provided to the Information Commissioner on request
- carry out a Data Protection Impact Assessment for any high risk personal data processing, and consult the Information Commissioner if appropriate
- appoint a Data Protection Officer to provide independent expert advice and monitoring of the departments' personal data handling and this person has access to report to the highest management level of the department
- have in place internal processes to ensure personal data is only collected, used or handled in a way that is compliant with data protection law.
- East Kent Audit Partnership will conduct audits of our processes to determine compliance with data protection

Retention and erasure policies

We will ensure, where special category or criminal convictions personal data is processed, that:

- there is a record of that processing, and that record will set out, where possible, the envisaged time limits for erasure of the different categories of data
- where we no longer require special category or criminal convictions personal data for the purpose for which it was collected, we will delete it or render it permanently anonymous
- data subjects receive full privacy information about how their data will be handled, and that this will include the period for which the personal data will be stored, or if that is not possible, the criteria used to determine that period.

Contact Information

If you wish to contact our Data Protection Officer, you can do so: either by writing to:

Data Protection Officer, Information Governance, Thanet District Council, Cecil Street, Margate, Kent, CT9 1XZ or email: dataprotection@thanet.gov.uk